



<RULE>
<PREAMB>
9111-14

R.P. 11-20
ADM-9-03 OT:RR:RD:TC
H213180 SK

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 13-12

Docket No. USCBP-2012-0004

RIN 1515-AD82

**Inadmissibility of Consumer Products and Industrial Equipment Noncompliant with
Applicable Energy Conservation or Labeling Standards**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations that provide that CBP will refuse admission into the customs territory of the United States to consumer products and industrial equipment found to be noncompliant with energy conservation and labeling standards pursuant to the Energy Policy and Conservation Act of 1975 (EPCA) and its implementing regulations. The final rule further provides that, upon written or electronic notice from the Department of Energy (DOE) or the Federal Trade Commission (FTC), CBP may conditionally release under bond to the importer such noncompliant products or

equipment for purposes of reconditioning, re-labeling, or other action so as to bring the subject product or equipment into compliance. This regulation implements the mandate of the EPCA, as amended.

DATES: Effective [Insert date 30 days after date of publication of this document in the **Federal Register.**]

FOR FURTHER INFORMATION CONTACT: Virginia H. McPherson, Trade Processes, Trade Policy and Programs, Office of International Trade, (202) 863-6563; William R. Scopa, Partner Government Agencies, Office of International Trade, (202) 863-6544.

SUPPLEMENTARY INFORMATION:

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309), as amended, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Similarly, Title III, Part C of the EPCA, (42 U.S.C. 6311–6317) as amended, added by Pub. L. 95-619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, a program covering industrial equipment.

Section 6302(a) of title 42 of the United States Code (42 U.S.C. 6302(a)), and its implementing regulations, prescribe the specific energy conservation and labeling standards applicable to manufacturers and, in some instances, private labelers, distributors, and retailers. Sections 6301 and 6316 of title 42 of the United States Code (42 U.S.C. 6301 and 6316) require the Secretary of the Treasury to issue regulations refusing admission into the customs territory of the United States to covered products or covered equipment offered for

importation in violation of 42 U.S.C. 6302. The statute also provides the Secretary with the discretion to authorize the importation of covered products or covered industrial equipment under terms and conditions (including the furnishing of a bond) that ensure that the merchandise will not violate 42 U.S.C. 6302.

On March 26, 2012, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (77 FR 17364) a proposal to amend part 12 of title 19 of the Code of Federal Regulations (19 CFR Part12) by adding a new § 12.50, which provides that CBP will refuse admission into the customs territory of the United States to imports of products or equipment covered by the EPCA and its implementing regulations, for which CBP has received a written determination of noncompliance with 42 U.S.C. 6302 from the Department of Energy (DOE) or the Federal Trade Commission (FTC), as applicable.

This proposed regulation's goal was to implement the mandate of the EPCA to refuse admission into the United States of certain consumer products and industrial equipment that do not meet applicable labeling or energy conservation requirements.

Proposed § 12.50 was drafted to be consistent with § 429.5(b) of title 10 of the Code of Federal Regulations (10 CFR 429.5(b)), which is a DOE regulation that further notifies the importing public that any covered product or equipment offered for importation that does not meet the applicable energy conservation standards set forth in 42 U.S.C. 6291- 6317 will be refused admission into the customs territory of the United States under CBP issued regulations.

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Eight commenters responded to the solicitation of public comment. A description of the comments received, together with CBP's analyses, is set forth below.

Comment:

One commenter recommends that U.S. government agencies provide training to importers on purchasing goods and industrial equipment that meet relevant applicable energy conservation and labeling admissibility standards.

CBP Response:

CBP agrees that importers should be aware of the EPCA requirements applicable to their respective products and equipment and exercise reasonable care in the importation thereof. While it is not within CBP's purview to provide such training, we note that there is extensive information on EPCA requirements at the Department of Energy website http://www1.eere.energy.gov/buildings/appliance_standards. DOE has provided training regarding DOE's appliance standards regulatory program to groups of manufacturers through manufacturing trade associations and will provide training upon request. Trade groups may request EPCA compliance training by contacting DOE at energyefficiencyenforcement@hq.doe.gov.

Comment:

Two commenters are of the view that the 30-day conditional release period is not long enough for an importer to bring non-compliant merchandise into compliance with 42 U.S.C. 6302 and its implementing regulations.

CBP Response:

Non-compliant covered products and equipment that DOE or FTC deems to be in violation of 42 U.S.C. 6302 will be refused admission, unless DOE or FTC recommends release to the importer's premises to bring such products and equipment into compliance in which case CBP may conditionally release such products for such purpose. 77 FR 17365. In addition, as noted in § 12.50(d), conditionally released covered imports are subject to the jurisdiction of DOE and/or FTC. Paragraph (d)(2) of this section provides that the conditional release period may be extended if CBP receives, within the initial 30-day conditional release period or any subsequent authorized extension thereof, a written or electronic recommendation from DOE or FTC stating the reason for a further extension and the anticipated length of the extension.

Comment:

One commenter expresses concern that administering the proposed rule would be overly burdensome on CBP and detract from the agency's other responsibilities under its mission.

CBP's Response:

As part of CBP's mission, CBP assists other government agencies in enforcing their regulatory requirements on imports and exports. CBP's administrative obligations under the rule will not cause an undue burden on CBP's resources or importers, in part because CBP will have access to substantive advice provided by DOE or FTC.

Comment:

One commenter is of the view that the proposed rule fails to comply with the statutory requirement to ensure that non-compliant covered products and equipment are

refused admission into the customs territory of the United States, noting that section 331 of the EPCA requires implementation of an affirmative program to ensure at the time that a covered product or equipment is proposed for importation that the goods meet the applicable efficiency standards and labeling requirements. Specifically, the commenter views the proposed rule as arbitrary and capricious because it evades CBP's nondiscretionary statutory responsibility to refuse admission to noncompliant products or equipment by relying on DOE and FTC's discretionary authority to identify products and equipment as noncompliant. The commenter notes that even if those agencies had the resources to identify noncompliant products and equipment, the statute does not require them to do so. The commenter maintains that the proposed rule also fails to impose measures appropriate to ensure that such products and equipment will come into compliance or be exported or abandoned to the United States.

CBP Response:

CBP disagrees with the commenter's argument that the proposal did not meet its obligation under the statute. The proposed rule does set forth a regulatory scheme whereby CBP will refuse admission to covered products and equipment that do not comply with the EPCA.

Nevertheless, in an effort to clarify the procedures by which a refusal of admission may take place, this document adds language in the final rule to 19 CFR 12.50(b) that states that CBP may make a finding on its own that a covered product or equipment is noncompliant without having received a prior written noncompliance notice from DOE or FTC. In these situations, CBP will confer with DOE or FTC, as applicable, as to disposition of the product or equipment.

Comment:

One commenter states that CBP cannot reasonably rely exclusively on DOE or FTC to identify and notify CBP of noncompliant products and equipment. The commenter further states that under 42 U.S.C. 6305, a citizen may establish that products are noncompliant by bringing a citizen's suit and yet, pursuant to the proposed rule, CBP would not refuse admission to such products and equipment under these circumstances.

CBP Response:

As noted above, CBP is adding language in § 12.50(b) to include a statement indicating that CBP will refuse admission to a covered product or equipment found to be noncompliant with the EPCA even if DOE or FTC has not issued a determination of noncompliance for the good. Therefore, the agency's reliance on DOE and FTC is not exclusive.

Comment:

One commenter maintains that the proposed rule's requirement that DOE and FTC not only name the regulated party that is in violation but also describe the product or equipment in sufficient detail to enable CBP to identify noncompliant covered articles has not been adequately explained and could pose an irrational bar to enforcement.

CBP Response:

CBP does not agree that this requirement will preclude meaningful enforcement. CBP notes, for example, that DOE's current notices of noncompliance already typically provide far more information than simply the name of the regulated party that is in violation. DOE has access to CBP entry information, which includes parties involved in the importation

of products regulated by DOE, and which DOE can compare to information in its DOE Compliance and Certification Management System.

Comment:

One commenter suggests that CBP must require importers to provide proof of compliance or other information sufficient to enable the use of existing DOE and FTC resources to identify noncompliant products and facilitate their return to CBP. CBP should create a system that is linked with the DOE Compliance and Certification Management System database and require that importers identify their proposed import as in compliance with applicable standards and labeling requirements and certified as such in the database.

CBP Response:

CBP acknowledges that linked automated systems would facilitate enforcement of the statute. In this regard, it is noted that CBP is actively participating in the development of automated systems in which participating government agencies, including DOE, can share data in order to facilitate cargo processing and enhance supply chain security.

Comment:

One commenter expressed approval of the proposed rulemaking, noting that it puts everyone on a level playing field.

CBP Response:

CBP agrees.

Comment:

One commenter suggests that CBP amend the proposed rule to include an exception for products and equipment intended for export only or transshipment.

CBP Response:

As noted above, the provisions of 42 U.S.C. 6301 empower the Secretary of the Treasury to authorize the importation of such covered products and equipment upon such terms and conditions (including the furnishing of a bond) as may appear to him appropriate to ensure that such covered products and equipment will not violate section 6302 of this title. CBP agrees that imported products and equipment not entered for consumption should be excluded from the definition of “covered import.” For example, products and equipment may be entered into customs bonded warehouses and withdrawn for exportation (see 19 U.S.C. 1557), admitted into Foreign Trade Zones and then transferred for exportation in zone-restricted status (see 19 U.S.C. 81c), or entered for transportation and exportation under bond (see 19 U.S.C. 1553). Therefore, CBP is including language in the final rule in § 12.50(a) to clarify that “covered imports” means those products and equipment for which an entry for consumption has been filed, including those products and equipment withdrawn from warehouse for consumption or foreign merchandise entered for consumption from a foreign trade zone.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as final, with the changes noted above in §§ 12.50(a) and (b) (19 CFR 12.50(a) and (b)), the proposed rule published in the **Federal Register** (77 FR 17364) on March 26, 2012. This final rule also includes non-substantive editorial changes which consist of: a merging of proposed paragraphs (b) and (c) to clarify the fact that CBP’s “action” is a “refusal of admission”; a newly redesignated paragraph (c) which sets forth the manner by which DOE

or FTC will notify CBP about noncompliant products and equipment; inclusion of a reference to the relevant statutory authority in the definition of “noncompliant covered import” in 19 CFR 12.50(a); and a removal of the reference to “paragraph (b)” in 19 CFR 12.50(d)(1)(i) to clarify that CBP’s refusal of admission as used in this context pertains to conditional release. Lastly, this document amends proposed 19 CFR 12.50(d)(2) to reflect that an importer may request an extension of the conditional release period from DOE or FTC if made within the initial 30-day conditional release period or any subsequent authorized extension thereof. CBP may permit an extension of the conditional release period if it receives a written or electronic recommendation to that effect from DOE or FTC. If the noncompliant covered import is not timely brought into compliance, and DOE or FTC has not recommended an extension of the conditional release period, CBP will issue a refusal of admission notice to the importer and demand the redelivery of the specified covered product to CBP custody.

EXECUTIVE ORDER 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action.”

THE REGULATORY FLEXIBILITY ACT

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule establishes a procedure whereby CBP will refuse admission into the customs territory of the United States to consumer products and industrial equipment deemed noncompliant with the EPCA and its implementing regulations. Upon written or electronic notice by DOE or FTC, CBP may conditionally release under bond to the importer such noncompliant products or equipment for purposes of reconditioning, re-labeling, or other action so that they may be brought into compliance with applicable energy conservation and labeling standards.

DOE has identified only a small number of businesses importing noncompliant articles, of which fewer than five were small entities. When notified of their noncompliance, each of these businesses ceased importation of these articles. Given the small number of small entities identified by DOE as having been noncompliant and that the law prohibiting the importation of these noncompliant articles within the United States was enacted in 1975, CBP does not anticipate a significant number of small entities attempting to import articles which violate 42 U.S.C 6302 and its implementing regulations. If a small entity does import an article in violation of 42 U.S.C 6302 and its implementing regulations, the small entity can request DOE or FTC to allow CBP to grant the imported article a conditional release. CBP

believes the cost associated with this conditional release to be negligible because this request is virtually costless to the small entity and the importer is already required to maintain a CBP basic importation and entry bond.

No comments were submitted regarding this assessment. Accordingly, based on the above analysis, CBP certifies that this rule will not have a significant impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his or her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Electronic products, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

Amendments To The CBP Regulations

For the reasons stated above, part 12 of title 19 of the Code of Federal Regulations (19 CFR Part 12) is amended as set forth below.

PART 12--SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows and the specific authority citation is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * *

Section 12.50 also issued under 42 U.S.C. 6301;

* * * *

2. A center heading and § 12.50 are added to read as follows:

Consumer Products and Industrial Equipment Subject To Energy Conservation or Labeling Standards

§ 12.50 Consumer products and industrial equipment subject to energy conservation or labeling standards.

(a) Definitions. For purposes of this section, the following terms have the meanings indicated:

Covered import. The term “covered import” means a consumer product or industrial equipment that is classified by the Department of Energy as covered by an applicable energy conservation standard, or by the Federal Trade Commission as covered by an applicable energy labeling standard, pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291- 6317), and for which an entry for consumption has been filed, including products and equipment withdrawn from warehouse for consumption or foreign merchandise entered for consumption from a foreign trade zone.

DOE. The term “DOE” means the Department of Energy.

Energy conservation standard. The term “energy conservation standard” means any standard meeting the definitions of that term in 42 U.S.C. 6291(6) or 42 U.S.C. 6311(18).

FTC. The term “FTC” means the Federal Trade Commission.

Noncompliant covered import. The term “noncompliant covered import” means a covered import determined to be in violation of 42 U.S.C. 6302 or 42 U.S.C. 6316 as not in compliance with applicable energy conservation or energy labeling standards.

(b) CBP action; refusal of admission. CBP will refuse admission into the customs territory of the United States to any covered import found to be noncompliant with applicable energy conservation or energy labeling standards. If DOE or FTC notifies CBP that a covered import does not comply with an applicable energy conservation or energy labeling standard, CBP will refuse admission to the covered import, or pursuant to paragraph (d) of this section, CBP may allow conditional release of the covered import so that it may be brought into compliance. CBP may make a finding that a covered import is noncompliant without having received a prior written noncompliance notice from DOE or FTC. In such a situation, CBP will confer with DOE or FTC, as applicable, as to disposition of the import.

(c) DOE or FTC notice. Upon a determination that a covered import is not in compliance with applicable energy conservation or labeling standards, DOE or FTC, as applicable, will provide CBP with a written or electronic notice that identifies the importer and contains a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof into the customs territory of the United States

(d) Conditional release. In lieu of immediate refusal of admission into the customs territory of the United States, CBP, pursuant to a written or electronic recommendation from DOE or FTC, may permit the release of a noncompliant covered import to the importer of record for purposes of reconditioning, re-labeling, or other modification. The release from CBP custody of any such covered import will be deemed conditional and subject to the bond

conditions set forth in § 113.62 of this chapter. Conditionally released covered imports are subject to the jurisdiction of DOE and/or FTC.

(1) Duration. Unless extended in accordance with paragraph (d)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

- (i) The date CBP issues a notice of refusal of admission to the importer;
- (ii) The date DOE or FTC issues a notice to CBP stating that the covered import is in compliance and may proceed; or
- (iii) At the conclusion of the 30-day period following the date of release.

(2) Extension. An importer may request an extension of the conditional release period from DOE or FTC if made within the initial 30-day conditional release period or any subsequent authorized extension thereof. CBP may permit an extension of the conditional release period if recommended electronically or in writing, by DOE or FTC.

(3) Issuance of redelivery notice and demand for redelivery. If DOE or FTC notifies CBP in writing or electronically that noncompliant covered imports have not timely been brought into compliance, CBP will issue a refusal of admission notice to the importer and, in addition, CBP will demand the redelivery of the specified covered import to CBP custody. The demand for redelivery may be made concurrently with the notice of refusal of admission.

(4) Liquidated damages. A failure to comply with a demand for redelivery made under this paragraph (d) will result in the assessment of liquidated damages equal to three times the value of the covered product. Value as used in this provision means value as determined under 19 U.S.C. 1401a.

Thomas S. Winkowski
Deputy Commissioner of CBP,
Performing the Duties of the
Commissioner of CBP

Approved: July 1, 2013

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

<FRDOC> [FR Doc. 2013-16223 Filed 7-3-13; 8:45
am]

<BILCOD>BILLING CODE 9111-14-P

[FR Doc. 2013-16223 Filed 07/03/2013 at 8:45 am; Publication Date:
07/05/2013]